

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	No. CV-F-05-290 REC/DLB
)	
)	ORDER DENYING RESPONDENTS'
Plaintiff,)	MOTION FOR STAY AND VACATING
)	ORAL ARGUMENT NOTICED FOR
vs.)	OCTOBER 3, 2005
)	
)	
V. STEVEN BOOTH and LOUISE Q.)	
BOOTH,)	
)	
)	
Respondent.)	
)	
)	

Respondents were ordered to appear on August 22, 2005 and show cause why they should not be held in civil contempt for their failure to comply with the Summons Enforcement Order. Respondents did not appear on August 22 and did not file any response to the Order to Show Cause. The Order to Show Cause re Contempt specifically provided:

IT IS FURTHER ORDERED that on or before Monday, August 8, 2005 the respondents shall file and serve a written response to the 'Petition Re: Civil Contempt of Orders filed May 23-25, 2005.' Only those issues brought into controversy by the responsive papers and

1 supported by declaration will be considered
2 at the hearing on this Order, and any
3 uncontested allegation in the Petition Re:
4 Civil Contempt will be considered admitted.

5 Respondents are hereby notified that a
6 failure to comply with this Order will
7 subject respondents to possible further
8 sanctions for contempt of Court.

9 The court orally ruled on August 22 that respondents are in
10 contempt of court and directed the United States to lodge a
11 proposed Order. The United States lodged the proposed Order on
12 August 30, 2005.

13 On August 31, 2005, respondents filed a motion for stay,
14 noticing the motion for hearing on October 3, 2005. In support
15 of the motion for stay is filed respondents' declaration in which
16 it is averred:

17 2. On or about October 1, 2004, Internal
18 Revenue Agent Fred Chynoweth issued and
19 served IRS Summons to all defendants [sic]
20 and appellants seeking testimony and
21 production of certain books, records and
22 documents, which erroneously believed [sic] was
23 in the possession of defendants [sic] and
24 appellants for the years 1998 through 2002.

25 3. Defendants and Appellants refused for
26 cause, without dishonor the IRS request for
testimony and informed Fred Chynoweth that
the records and documents requested were not
in the control or possession of defendants
[sic].

4. Defendants [sic] and Appellants asserted
the Fifth Amendment right and have refused
for cause, without dishonor all attempts by
Fred Chynoweth to compel testimony.

5. On May 23, 2005, the Hon. Robert E.
Coyle, United States District Judge, signed
an Order enforcing said summonses.

1 6. Defendants [sic] and appellants duly and
2 timely filed Notice of Appeal on June 3,
3 2005.

4 6. On August 22, 2005, the said Judge Coyle
5 conducted a show cause hearing on the Order
6 enforcing said summonses. The court
7 concluded that all defendants [sic] and
8 appellants failed to appear at said hearing
9 and were therefore held in contempt by the
10 court. To date, no order has been filed on
11 the contempt finding as to each defendant
12 [sic] and appellant.

13 7. Good cause exists for the issuance of a
14 stay of all proceedings in the court below
15 because if the order of contempt issued below
16 is not stayed by this Honorable Court, the
17 issues raised in Defendants' [sic] and
18 Appellants' appeal will be rendered moot.

19 As is discussed in the court's written Order finding
20 respondent to be in civil contempt and imposing coercive
21 sanctions as a result of civil contempt, the fact that
22 respondents filed an appeal to the Ninth Circuit of the Summons
23 Enforcement Order does not excuse the failure to comply with the
24 Summons Enforcement Orders in the absence of a stay pending
25 appeal. These legal principles and case law supporting them were
26 all set forth in the United States' petition for the order to
27 show cause why respondent should not be found in civil contempt.
28 And as noted, the Order to Show Cause re Civil Contempt
29 specifically directed respondents to file any opposition to the
30 Order to Show Cause re Civil Contempt by a date certain.
31 Respondents filed nothing and did not appear at the August 22
32 hearing.

33 Respondents are seeking a stay pending appeal of both the

1 Summons Enforcement Orders and the oral order issued on August
2 22, 2005 finding respondents in civil contempt.

3 The Notice of Appeal to the Ninth Circuit from the Summons
4 Enforcement Order states that the issues for appeal are:

5 1) Whether the District Court had
6 jurisdiction to issue the Order dated May 23,
2005, the entire record considered.

7 2) Whether the enforcement of the summons is
8 a violation of the Respondent/Appellants 5th
amendment privilege.

9 3) Whether the court can force the Authorized
10 Agent to testify on behalf of the respondent,
since the respondent is an artificial entity.

11 In deciding whether to issue a stay of the Summons
12 Enforcement Orders pending appeal, the court considers the
13 following factors:

14 (1) whether the applicant has made a strong
15 showing that he is likely to succeed on the
16 merits; (2) whether the applicant will be
17 irreparably injured absent a stay; (3)
18 whether the issuance of the stay will
substantially injure other parties interested
in the proceeding; and (4) where the public
interest lies.

19 United States v. Fitzgerald, 884 F.Supp. 376, 377 (D.Idaho 1995).

20 In the instant motion for stay, respondents have made no
21 showing, much less a strong showing, of likelihood of success on
22 the merits of the issues raised in the notice of appeal. In
23 fact, respondents do not discuss the merits of the issues at all,
24 merely relying on the assertion that the appeal will be rendered
25 moot if the stay is not issued. Furthermore, none of the issues
26 asserted in the notice of appeal have arguable merit. This court

1 has jurisdiction pursuant to 26 U.S.C. §§ 7402(a) and 7604 to
2 issue the summons enforcement orders. Respondents' claim that
3 enforcement of the IRS summonses will violate their rights under
4 the Fifth Amendment against self-incrimination cannot be raised
5 on appeal because respondents have not appeared before the IRS in
6 compliance with the summons and then raised the privilege with
7 respect to the questions asked or documents sought. See See
8 United States v. Rendahl, 746 F.2d 553, 555 (9th Cir. 1984)
9 (respondent cannot invoke privilege in appeal of summons
10 enforcement order, but must wait until he appears before the IRS
11 and raises the privilege with respect to questions asked or
12 documents sought). Respondents' contention that respondents are
13 an "artificial entity" of which respondents are the "Authorized
14 Agent" who cannot be compelled to testify against the "artificial
15 entity" is unsupported by any legal authority of which this court
16 is aware.

17 There is no showing that respondents will be irreparably
18 injured if a stay pending the appeal of the Summons Enforcement
19 Order is denied. The Summons Enforcement Order provided that the
20 validity of any claim of the Fifth Amendment privilege to
21 questions asked or documents sought would be determined by the
22 Magistrate Judge during the summons enforcement hearing. Once
23 those rulings were made, respondents could appeal those rulings
24 to the district court and from there to the Ninth Circuit.

25 Furthermore, the petitioner will be substantially injured by
26 delay in enforcement of the IRS summons as will the public

1 interest in the timely and efficiently collection of taxes and
2 the resolution of litigation involving enforcement of the federal
3 tax laws.

4 The court also denies respondents' motion for stay pending
5 appeal to the extent that the motion is directed to the oral
6 order finding respondents in contempt made from the bench on
7 August 22, 2005 and the written Order finding respondents to be
8 in contempt and imposing coercive sanctions. While an order for
9 contempt is final and appealable, see United States v. Hallahan,
10 768 F.2d 754, 755 (9th Cir. 1985), the court looks to the same
11 factors in determining whether or not to issue a stay of a
12 contempt order as described above. These factors do not weigh in
13 favor of a stay of any contempt order pending appeal. As noted,
14 respondents' challenges to the legality of the Summons
15 Enforcement Order are without merit at this juncture. While
16 respondents will be injured by the contempt orders because
17 respondents will be incarcerated and will be required to pay a
18 compensatory fine, respondents can purge the contempt by
19 complying with the Summons Enforcement Order and by paying the
20 fine. In addition, upon compliance with the Summons Enforcement
21 Order and valid claims of the Fifth Amendment privilege,
22 respondents will be able to appeal any rulings concerning the
23 privilege and can seek a stay pending appeal at that time.
24 Therefore, the potential injury because of the contempt order is
25 not irreparable. Finally, as stated above, the petitioner will
26 be substantially injured by delay in enforcement of the IRS

1 summons as will the public interest in the timely and efficiently
2 collection of taxes and the resolution of litigation involving
3 enforcement of the federal tax laws.

4 Respondents have noticed the motion for stay pending appeal
5 for hearing on October 3, 2005. Because respondents have not
6 shown that respondents are entitled to a stay, the motions to
7 stay is denied without oral argument. Furthermore, respondents
8 were given the opportunity to file any responses or oppositions
9 to the Order to Show Cause re Civil Contempt. Respondents failed
10 to do so either in a pleading filed with the court or orally at
11 the hearing on August 22, 2005.

12 ACCORDINGLY:

13 1. Respondents' motion for stay pending appeal is denied.

14 2. Oral argument set for October 3, 2005 is vacated.

15 IT IS SO ORDERED.

16 Dated: September 6, 2005
668554

/s/ Robert E. Coyle
UNITED STATES DISTRICT JUDGE